

AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) subsections 901.301-70 and 901.301-71.

CONTENTS

CITATION

DEAR 970.7103

TITLE

Contractor Purchasing System

I. Purpose. This AL is to inform the Department of Energy (DOE) Procurement Directors about the use of a model clause set in subcontracts between DOE national laboratories and scientific institutes in the New Independent States of the former Soviet Union (NIS). At present, there are approximately 250 subcontracts between DOE laboratories and NIS scientific institutes.

II. Background. DOE laboratories have been placing subcontracts for research and development services with scientific institutes in the NIS under various DOE programs for many years. Currently, there are approximately 190 subcontracts under a relatively new DOE program known as the New Independent States-Industrial Partnering Program (NIS-IPP). The remaining subcontracts with NIS scientific institutes are under various other DOE programs.

The NIS-IPP supports the national security interest of preventing the proliferation of weapons of mass destruction through cooperative projects between the United States and military-related institutes in the NIS. The goal of NIS-IPP projects is to redirect technologies, materials, resources and personnel in the NIS to non-military scientific and commercial research and development. NIS-IPP projects are being implemented through subcontracts funded by the U.S. Government between NIS military-related institutes and the following 10 DOE national laboratories: Argonne National Laboratory, Brookhaven National Laboratory, Idaho National Engineering Laboratory; Lawrence Berkeley National Laboratory; Lawrence Livermore National Laboratory; Los Alamos National Laboratory; National Renewal Energy Laboratory; Oak Ridge National Laboratory; Pacific Northwest Laboratory; and Sandia National Laboratories.

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U.S. industry also participates in the NIS-IPP through a consortium of U.S. companies known as the United States Industry Coalition (USIC) under the terms of a November 17, 1994 Memorandum of

Understanding between DOE and USIC. Industry and university members of USIC cost-share projects with the U.S. Government to bring technology developed in the NIS to the marketplace. USIC members participate by entering into cooperative research and development agreements (CRADA) with participating laboratories to further develop NIS technologies. Laboratories then subcontract a portion of the research and development work for which they are responsible under the CRADA to the NIS institutes.

Due to the increase in the number of subcontracts between DOE laboratories and NIS institutes, many NIS institutes have subcontracts with several laboratories. Each laboratory has been using its own subcontract form. The NIS institutes have raised concerns that the use of different provisions in subcontracts with different Laboratories is confusing and time consuming. Laboratory officials also have indicated that the use of different subcontract clauses by the laboratories has resulted in contract administration problems with the NIS institutes. Similarly, DOE believes that clear subcontract language that can easily be understood by NIS institutes is essential to accomplish DOE's missions and to ensure fund accountability under subcontracts between DOE laboratories and NIS institutes.

To address these problems, the DOE Office of the General Counsel championed a team representing the DOE laboratories and the Office of Procurement and Assistance Management to draft model General Provisions and model intellectual property rights (IPR) terms for subcontracts between DOE laboratories and NIS institutes. These clauses are being provided to the DOE laboratories to assist their negotiation of subcontracts with the NIS that reflect, in clear language, those essential terms and conditions necessary to protect the interests of the Department.

The General Provisions represent clauses that the team believes are necessary to achieve the purposes of the subcontracts and that must be included in subcontracts between management and operating contractors and foreign entities. With regard to the IPR clauses, we have decided to utilize different standard IPR terms for subcontracts under the NIS-IPP and for other subcontracts between DOE laboratories and NIS

institutes to reflect differences in two class patent waivers that DOE has granted. Class Patent

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Waiver No. W(C) 94-010 covers the NIS-IPP, and Class Patent Waiver No. W(C) 95-008 covers all other DOE programs with the NIS. The latter waiver is for a two-year period, and includes waiver of rights that reflects the allocation under international agreements. During the two-year period of the waiver, DOE will negotiate and enter into various international agreements with various ministries in the NIS. The goal is to have these agreements in place at the end of the two-year period so that future collaboration between the laboratories and NIS institutes will occur under the international agreements and be subject to their standard IPR terms and conditions.

III. Guidance a) DOE Procurement Directors will provide the attached model General Provisions and model IPR clauses to the management of those laboratories placing contracts with NIS institutes.

Attachment 1 contains General Provisions for use in subcontracts between DOE laboratories and NIS institutes.

Attachment 2 contains IPR provisions for use in subcontracts between DOE laboratories and NIS institutes under the NIS-IPP of the Office of Non-Proliferation and National Security (NN-1). Rights to inventions under the NIS-IPP are governed by Class Patent Waiver No. W(C) 94-010.

Attachment 3 contains IPR provisions for use in other subcontracts for research and development between DOE laboratories and NIS institutes. Rights to inventions under those subcontracts are governed by Class Patent Waiver No. W(C) 95-008.

b) Use of the model General Provisions and IPR clauses in all subcontracts between DOE laboratories and the NIS institutes is essential to achieving consistent and clear subcontract language. Standard clauses also will simplify contract administration for the NIS institutes and laboratories. Accordingly, Procurement Directors should obtain assurances that these clauses will be used by the laboratories. After implementation of these clauses, the only differences among laboratory subcontracts with NIS institutes under a particular DOE program should be the statements of work, terms of payment, delivery schedules, etc.

- c) DOE Procurement Directors should advise the laboratories that the Program Manager for the NIS-IPP considers use of these clauses to be essential elements for an approved NIS-IPP project.

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- d) DOE Procurement Directors should request that before modifying, adding, or deleting any clause, a laboratory advise this office, through their offices, as to the reasons therefor, so that we may retain consistency of application. Clauses may be changed as is necessary. However, different clauses should be used only after consultation with DOE.

IV. Effective Date. This Acquisition Letter is effective immediately.

V. Expiration Date. This Acquisition Letter will remain in effect until superseded or canceled.

GENERAL PROVISIONS

CLAUSE 1 - TITLE

Title to the material and supplies purchased hereunder shall pass directly from Contractor to the U.S. Government at the F.o.B. point shown, subject to the right of Laboratory to reject upon inspection.

CLAUSE 2 - CHANGES-FIXED-PRICE

A.Laboratory may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:

1. Description of services to be performed.
2. Time of performance (i.e., hours of the day, days of the week).
3. Place of performance of the services.
4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the U.S. Government, in accordance with the drawings, designs, or specifications.
5. Method of shipment or packing of supplies.
6. Place of delivery.
7. Description and delivery date of Laboratory-furnished U.S. Government property.

B.If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the Contract, Laboratory shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.

C.Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if Laboratory decides that the facts justify it, Laboratory may receive and act upon a proposal submitted before final payment of the Contract.

D.If Contractor's proposal includes the cost of property made obsolete or excess by the change, Laboratory shall have the right to prescribe the manner of the disposition of the property.

E.Nothing in this clause shall excuse Contractor from proceeding with the Contract as changed.

CLAUSE 3 - TERMINATION

A.Laboratory may, by written notice stating the extent of termination and effective date, terminate this Contract for convenience, in whole or in part, at any time. Promptly, but not later than one year from the effective date of termination (unless Laboratory grants additional time), Contractor shall submit its termination claim in the form prescribed by Laboratory. Laboratory shall pay Contractor the unit or prorata Contract price for the delivered and accepted portion of performance prior to termination. Such payment shall constitute full and final compensation for performance of the part of the Contract terminated for convenience.

B.Laboratory may, subject to paragraphs C and D below, by written notice of default to Contractor, terminate this Contract for Contractor's default, in whole or in part, at any time, if Contractor refuses or fails to:

1. Comply with the provisions of the Contract;
2. Fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time after receiving written notice from Laboratory requesting Contractor to cure such failure to make progress; or
3. Fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof.

C.If, after notice of termination for default, Laboratory determines that Contractor was not in default or that the failure to perform this Contract is due to causes beyond the control and without the fault or negligence of Contractor (including, but not restricted to, acts of God or of the public enemy, Laboratory's acts, acts of Laboratory's or Contractor's Government in either its sovereign or contractual capacity, fires, floods,

epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a lower-tier supplier due to such causes and without the fault or negligence of the lower-tier supplier or supplier), termination shall be deemed for the convenience of Laboratory, unless, in the case of lower-tier supplier delay, Laboratory determines that the materials, supplies, or services covered by this Contract were obtainable from other sources in sufficient time to meet the required delivery schedule.

D.If Laboratory determines that Contractor has been delayed in the work due to causes beyond the control and without the fault or negligence of Contractor, Laboratory may extend the time for completion of the work called for by this Contract, when promptly applied for in writing by Contractor; and if such delay is due to failure of Laboratory, not caused or contributed to by Contractor, to perform services or deliver property in accordance with the terms of the Contract, the time and price of the Contract shall be subject to change under the Changes Clause. Sole remedy of Contractor in event of delay by failure of Laboratory to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits.

E. Laboratory may require Contractor to transfer title and deliver to Laboratory, as directed by Laboratory, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (collectively referred to as "Manufacturing Materials" in this clause), that Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of Laboratory, Contractor shall also protect and preserve property in its possession in which Laboratory or the U.S. Government has an interest.

F. Laboratory shall pay the Contract price for completed supplies delivered and accepted. Contractor and Laboratory shall agree on the amount of payment for Manufacturing Materials delivered and accepted and for the protection and preservation of property. Laboratory may withhold from these amounts any sum Laboratory determines to be necessary to protect Laboratory against loss because of outstanding liens or claims on former lien holders.

G.The rights and remedies of Laboratory provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

H.As used in paragraph C of this clause, the word Contractor means "supplier" and "lower-tier suppliers" at any tier.

CLAUSE 4 - PROPERTY

A.Contractor shall be fully accountable and responsible for, and shall, in accordance with sound business practice safeguard at all times any property which Contractor acquires or manufactures for Laboratory's account and any and all U.S. Government property furnished Contractor by Laboratory or by the U.S. Government for performance of this work. Such property shall be used only in performance of work as provided in this Contract, and Contractor shall deliver or dispose of such property when and as Laboratory shall direct. Upon receipt of such property, Contractor shall satisfy itself that it is of a quantity, quality, and kind fully suitable for the use indicated in this Contract. Failure of Contractor to properly inspect and reject patently defective property prior to incorporation in the work shall make Contractor liable for all services and labor necessary to remedy and correct defects in the work caused thereby.

Title to all U.S. Government property furnished by Laboratory or the U.S. Government shall remain in the U.S. Government. Title to Contractor-acquired property shall pass to the U.S. Government (1) on the use of such property in performance of this Contract or (2) upon reimbursement by Laboratory for the cost thereof as specified in this Contract, whichever occurs first, subject to the U.S. Government's or Laboratory's right to reject such title in the event Contractor fails to deliver acceptable materials, supplies or services pursuant to this Contract. Upon such rejection, Contractor shall immediately refund to the U.S. Government or Laboratory, as directed, any and all moneys already paid to Contractor as reimbursement for the cost of such property. With respect to U.S. Government property furnished by Laboratory or the U.S. Government, neither the Laboratory nor the U.S. Government shall be liable to Contractor for damages or loss of profit by reason of any delay in delivery except that in case of such delay, upon Contractor's written request, an equitable adjustment shall be made in delivery or price, or both, pursuant to the Changes Clause of this Contract. Contractor shall maintain adequate control records of all property to which the U.S. Government has title consistent with good business practice and as may be prescribed by Laboratory or the U.S. Government and, if not so marked, shall cause all such property to be marked to show that it is property of the U.S. Government. Laboratory and the U.S. Government shall at all times have

access to the premises wherein property to which the U.S. Government has title is located.

B. Loss, Destruction or Damage

1. Unless otherwise provided in this Contract, Contractor assumes the risk of and shall be responsible for any loss or destruction of, or damage to, property in its possession to which the U.S. Government has title, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of the Contract.
2. Upon the happening of loss or destruction of, or damage to, property to which the U.S. Government has title, Contractor shall communicate with Laboratory and shall take all reasonable steps to protect such property, put all such property in the best possible order, and furnish to Laboratory a statement identifying (a) the lost, destroyed, and damaged property, (b) the time, date and cause of the loss, destruction, or damage, (c) all known interests in the commingled property of which such is a part, and (d) the insurance, if any, covering any part of or interest in such commingled property.
3. With the approval of Laboratory after loss or destruction of, or damage to, property to which the U.S. Government has title, and subject to such conditions and limitations as may be imposed by Laboratory, Contractor shall, in order to minimize the loss to Laboratory and the U.S. Government or in order to permit resumption of business or the like, sell for the account of Laboratory or the U.S. Government any item of such property which Laboratory determines has been damaged beyond practicable repair, or which Laboratory determines is so commingled or combined with property of others, including Contractor, that separation is impracticable. Contractor and Laboratory shall attempt to agree on the value of any lost, destroyed or damaged property to which the U.S. Government has title; however, if no agreement can be reached, Laboratory shall have the right to determine such value.

C. Laboratory reserves the right to vest title in Contractor of U.S. Government-furnished and Contractor acquired property at any time from the date of Order award to Order close-out. Prior to Laboratory vesting title in

Contractor, Contractor shall certify in writing that the U.S. Government property was purchased with contract funds or provided by Laboratory as U.S. Government-furnished property or equipment, and that no rental use or any other charge or cost for such property shall be included in any future contract with Laboratory or any entity of the U.S. Government.

CLAUSE 5 - INSPECTION

The materials, supplies or services furnished shall be exactly as specified in this Contract, free from all defects in Contractor's workmanship and materials, and except as otherwise provided in this Contract, shall be subject to inspection and test by the authorized Laboratory Representative at all times and places. If, prior to final acceptance, any materials, supplies, or services are found to be defective or not as specified, Laboratory may reject them, require Contractor to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Contractor is unable or refuses to correct such items within a time deemed reasonable to Laboratory, Laboratory may terminate the Contract, in whole or in part, for default. Contractor shall bear all risks as to rejected materials, supplies, and services, and, in addition to any cost for which Contractor may become liable to Laboratory under other provisions of this Contract, shall reimburse Laboratory for all transportation costs, other related costs incurred, or payments to Contractor in accordance with the terms of this Contract for unaccepted materials, supplies, and services. Notwithstanding final acceptance and payment, Contractor shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Any test programs and procedures required by the Schedule or Exhibits to this Contract are in addition to, and do not limit, Laboratory's rights provided in this clause.

CLAUSE 6 - STOP-WORK ORDER

A. Laboratory may, at any time, by written direction to Contractor, require Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after direction is delivered to Contractor, and for any further period to which the parties may agree. The direction shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the direction, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the direction during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Laboratory shall either:

1. Cancel the stop-work order; or
2. Terminate the work covered by the Contract as provided in the Termination Clause of this Contract.

B.If a stop-work order issued under this clause is canceled or the period of the direction or any extension thereof expires, Contractor shall resume work. Laboratory shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

- 1.The stop-work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and
- 2.Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if Laboratory decides the facts justify the action, Laboratory may receive and act upon the claim submitted at any time before final payment under this Contract.

C. If a stop-work order is not canceled and the work covered by the Contract is terminated for the convenience of the U.S. Government, Laboratory shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

D.If a stop-work order is not canceled and the work covered by the Contract is terminated for default, Laboratory shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

CLAUSE 7 - PREFERENCE FOR U.S.-FLAG AIR CARRIERS

A. Definitions.

- 1."International air transportation", as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

2."United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

3."U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

B.Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and U.S. Government contractors use U.S.-flag air carriers for U.S. Government carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

C.Contractor agrees, in performing work under this Contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

D.In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, Contractor shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY
OF U.S.-FLAG AIR CARRIER

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

[State reasons]:

(End of certification)

E. Contractor shall include the substance of this clause, including this paragraph E, in each lower-tier subcontract under this Contract that may involve international air transportation.

CLAUSE 8 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

A. U.S. law prohibits a recipient of a Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

B. The Act also requires Contractor to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

C. Contractor shall require the submittal of a certification, and if required, disclosure form by any person who requests or receives any subcontract or agreement exceeding ONE HUNDRED THOUSAND DOLLARS (\$100,000) under the Federal contract.

D. Contractor agrees not to make any payment prohibited by this clause.

CLAUSE 9 -INCONSISTENCIES DUE TO TRANSLATION INTO ANOTHER LANGUAGE

In the event of inconsistency between any terms of this Contract and any translation thereof into another language, the English language meaning shall control.

CLAUSE 10 - ANTI-KICKBACK PROCEDURES

A. This clause applies if this Contract exceeds \$100,000.

B.The Anti-Kickback Act of 1986, (41 U.S.C. 51-58)(the Act), prohibits any person or organization from:

1. Providing or attempting to provide or offering to provide any kickback;

2.Soliciting, accepting or attempting to accept any kickback; or

3.Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime contractor to the U.S. Government or in the Contract price charged by a seller to a prime Contractor.

C. 1.When Contractor has reasonable grounds to believe that a violation described in paragraph B of this clause may have occurred, Contractor shall promptly report, in writing, the possible violation. Such reports shall be made to the Laboratory Representative.

2.Contractor shall cooperate fully with any federal agency investigating a possible violation.

3. Laboratory may:

a.Offset the amount of the kickback against any monies owned by Laboratory under the Contract; and/or

b.Withhold sums owed Contractor under the Contract in the amount of the kickback.

D."Kickback" means any money, fee commission, credit, gift, gratuity, thing of value or compensation of any kind which provided, directly or indirectly, to any prime contractor, prime contractor employee, seller or seller employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with an Contract relating to a prime contract.

E.Contractor agrees to incorporate the substance of this clause, including this subparagraph E., in all lower-tier arrangements under this Contract which exceed \$100,000.

CLAUSE 11 - RESTRICTIONS ON Contractor SALES TO THE GOVERNMENT

- A. This clause applies if this Contract exceeds \$100,000.
- B. Except as provided in paragraph C below, Contractor shall not enter into any agreement with any actual or prospective lower-tier subcontractors, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the U.S. Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this Contract or under any follow-on Contracts.
- C. The prohibition paragraph B above does not preclude Contractor from asserting rights that are otherwise authorized by law or regulation.
- D. Contractor agrees to incorporate the substance of this clause, including this paragraph D, in all lower-tier arrangements under this Contract exceeding \$100,000.

CLAUSE 12 - RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

- A. Unless advance written approval of Laboratory is obtained, Contractor shall not acquire for use in the performance of this Contract:
 - 1. Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia or Cuba;
 - 2. Any supplies that are or were located in or transported through North Korea, Vietnam, Cambodia or Cuba;
 - 3. Arms, ammunition or military vehicles produced in South Africa or manufacturing data for such articles.
- B. Contractor shall not acquire for use in the performance of this Contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.
- C. Contractor agrees to insert the provisions of this clause, including this paragraph C., in all subcontracts hereunder.

CLAUSE 13 - EXAMINATION OF RECORDS BY CONTROLLER GENERAL

A. This clause applies if this Contract exceeds \$100,000 and was entered into by negotiation.

B. The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this Contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7 have access to and the right to examine any of Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract.

C. Contractor agrees to include in lower-tier Arrangements under this Contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the arrangement or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the lower-tier organization's directly pertinent books, documents, papers, or other records involving transactions related to the arrangement. "Arrangement," as used in this clause excludes (1) arrangements or purchase orders not exceeding \$100,000 and (2) utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

D. The periods of access and examination in paragraphs B and C above for records relating to (1) litigation or settlement of claims arising from the performance of this arrangement, or (2) costs and expenses of this Contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such litigation, claims, or exceptions are disposed of.

CLAUSE 14 - EXTRAS

Except as otherwise provided in this Contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by Laboratory.

CLAUSE 15- ASSIGNMENT AND CONTRACTING

A. Neither this Contract nor any interest therein nor claim thereunder shall be assigned or transferred by Contractor except as expressly authorized in writing by Laboratory. Laboratory may assign the whole or any part of this Contract to the U.S. Government or its designee.

B. Contractor shall not issue lower-tier arrangements for any portion of the work hereunder without the prior written approval of Laboratory. When requesting such approval, Contractor shall furnish Laboratory with the name of the proposed lower-tier organization, a description of the work proposed to be performed, and such other information as Laboratory shall require.

CLAUSE 16 - KEY PERSONNEL

Contractor shall furnish a list of project personnel to Laboratory for approval and Contractor agrees to assign such employees or persons to the performance of the work under this Contract and shall not reassign or remove any of them without the consent of Laboratory. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the Contract, Contractor shall, with the approval of Laboratory, replace such employee with an employee of substantially equal abilities and qualifications.

CLAUSE 17 - TAXES- FOREIGN FIXED-PRICE Contracts

A. To the extent that this Contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the Contract.

B. "Contract Date," as used in this clause, means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this Contract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this Contract are made.

"Tax" and "taxes," as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause, means all taxes and duties, in effect on the agreement date, that the taxing authority is imposing and collecting on the transactions or property covered by this Contract, pursuant to written ruling or regulation in effect on the Contract Date.

"After-imposed tax," as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the agreement date but whose exemption was later revoked or reduced during the Contract period, other than excepted tax, on the transactions or property covered by this Contract that Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Contract Date.

"After-relieved tax," as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this Contract, but which Contractor is not required to pay or bear, or for which Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the Contract Date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this agreement, or any tax assessed on Contractor's possession of, interest in, or use of property, title to which is in Laboratory or the U.S. Government.

C. Unless otherwise provided in this agreement, the Contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

D. The Contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the Contract price by a provision of this Contract that Contractor is required to pay or bear,

including any interest or penalty, if Contractor states in writing that the Contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through Contractor's fault, negligence, or failure to follow instructions of Laboratory or to comply with the provisions of paragraph (I) below.

E.The Contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. Laboratory shall be entitled to interest received by Contractor incident to a refund of taxes to the extent that such interest was earned after Contractor was paid by Laboratory for such taxes. Laboratory shall be entitled to repayment of any penalty refunded to Contractor to the extent that the penalty was paid by Laboratory.

F.The Contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the agreement and that Contractor is required to pay or bear, or does not obtain a refund of, through Contractor's fault, negligence, or failure to follow instructions of Laboratory or to comply with the provisions of paragraph (I) below.

G.No adjustment shall be made in the Contract price under this clause unless the amount of the adjustment exceeds U.S. \$250.

H.If Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the Contract price or was the basis of an increase in the Contract price, the amount of the reduction shall be paid or credited to Laboratory as Laboratory directs.

I.Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, Contractor, any lower-tier organization, or the transactions or property covered by this agreement are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

J. Contractor shall promptly notify Laboratory of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the Contract price and shall take appropriate action as Laboratory directs. The Contract price shall be equitably adjusted to cover the costs of action taken by Contractor at the direction of Laboratory, including any interest, penalty, and reasonable attorneys' fees.

CLAUSE 18 - CONFLICTS WITH OTHER AGREEMENTS

To the extent that any agreement between Contractor and a third party conflicts with the terms of this Contract, the agreement with the third party is superseded by the terms of this Contract.

CLAUSE 19 - CONTRACT MANAGEMENT

All correspondence shall be directed and/or copied to the attention of Laboratory's or Contractor's Representatives for this Contract identified in paragraph __ above.

No request, notice, authorization, direction or order received by Contractor and issued pursuant to this Contract, by reference or otherwise, shall be binding upon either Laboratory or Contractor, or serve as a basis for change in the Contract price or any other provision of this Contract, unless issued or confirmed in writing by the Laboratory's Representative named herein. Contractor shall immediately notify, in writing, Laboratory's Representative whenever a change request has been received from someone other than Laboratory's Representative which would affect any terms and conditions of this Contract.

CLAUSE 20 - PRINTING REQUIREMENTS

(This clause may be deleted without further consultation with the Department of Energy if a Laboratory determines that no printing services as described below will be provided by a Contractor)

A. To the extent that duplicating or printing services may be required in the performance of this Contract, the Contractor shall provide or secure

such services in accordance with the U.S. Government Printing and Binding Regulations, Title 44 of the U.S. Code, and Department of Energy Directives relative thereto.

B. The term "printing" includes the following processes; composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this Contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

C. Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

INTELLECTUAL PROPERTY TERMS FOR NIS-IPP SUBCONTRACTS

I. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.

The Contractor shall report to the U.S. Government through the Laboratory, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge and shall furnish to the U.S. Government, at the expense of the U.S. Government, when requested by the U.S. Government or the Laboratory all evidence and information in possession of the Contractor pertaining to such claim or any resulting suit.

II. PATENT RIGHTS

(a) Definitions

(1) "Subject Invention" means any invention or discovery of the Laboratory or the Contractor conceived or first actually reduced to practice in the performance of work under "NIS-IPP project no. ____" for Thrust I projects and "USIC IPP project no. ____" for Thrust II projects] of which this contract is a part.

(2) "Patent Counsel" means the DOE Patent Counsel assisting the Laboratory.

(b) Invention disclosures and reports

(1) The Contractor shall furnish the Patent Counsel and the Laboratory:

(i) A written report containing full and complete technical information concerning each Subject Invention of the Contractor within 2 months after conception or first actual reduction to practice whichever occurs first in the course of or under this contract, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Contractor. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding

of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention.

(ii) Upon request, but not more than annually, interim reports on a DOE approved form listing Subject Inventions of the Contractor for that period and certifying that all Contractor Subject Inventions have been disclosed or that there were no such inventions; and

(iii) A final report on a DOE-approved form within 3 months after completion of the contract work listing all Contractor Subject Inventions and certifying that all Contractor Subject Inventions have been disclosed or that there were no such inventions.

(2) The Contractor agrees that the U.S. Government and the Laboratory may duplicate and disclose Contractor Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to the contract.

(c) Rights to Subject Inventions

(1) The Laboratory, pursuant to its Prime Contract [insert Prime Contract number] with the U.S. DOE, has the right to elect title to Subject Inventions of the Laboratory.

(2) Pursuant to U.S. DOE's Class Waiver W(C) 94-010 of patent rights in the New Independent States (NIS) of the Former Soviet Union for inventions made by NIS institutes' employees in the course of or under agreements entered into pursuant to the Fiscal Year 1994 Foreign Appropriations Act (PL 103-87), the Contractor has the right to elect title to Subject Inventions of the Contractor in the New Independent States. The Laboratory has the right to elect title to Subject Inventions of the Contractor in the United States and third countries excluding the New Independent States.

(3) The election of title to a Subject Invention by the Laboratory shall be in accordance with the terms of its Prime Contract.

(4) The election of title to a Subject Invention of the Contractor in the New Independent States shall be within 2 years of disclosure pursuant to paragraph

b(1), but no later than that of the Laboratory for the same Subject Invention in the United States and third countries.

- (5) The Contractor and Laboratory acknowledge that the U.S. DOE may obtain title to each Subject Invention for which a patent application or applications are not elected or filed by the Contractor and/or the Laboratory and for which any issued patents are not maintained by the Contractor and/or the Laboratory. To the extent that the U.S. DOE acquires title to a Subject Invention, Contractor and the Laboratory agree to take such actions and execute all appropriate documents (at no expense to Contractor) to enable the U.S. DOE to file, prosecute and maintain patent applications thereon.
- (6) The Contractor and the Laboratory acknowledge that the U.S. Government retains a non-exclusive, nontransferable, irrevocable, paid-up license to practice or to have practiced by or on behalf of the U. S. Government every Subject Invention throughout the world.
- (7) For each Subject Invention that the Laboratory elects title thereto pursuant to paragraphs (1) through (3) above, the Laboratory agrees to cause a patent application to be filed and prosecuted in the U.S. Patent Office on said Subject Invention. Further, the Laboratory may cause to be filed and prosecuted foreign patent applications(s) on said Subject Invention. The Laboratory agrees to timely notify Contractor of any intent of the Laboratory not to elect, file, prosecute, or maintain any Subject Invention of the Contractor and any patent application or patent thereon and in such event shall afford the Contractor the opportunity to acquire title thereto from either DOE or the Laboratory and effect patenting or maintenance thereof at Contractor's expense. The Laboratory agrees to take such actions and execute all appropriate documents to effect such transfer.
- (8) The Contractor certifies that it has not and will not enter into an agreement with a third party that conflicts with this contract. To the extent that any subsequent agreement between the Contractor and a third party conflicts with the allocation of rights in Contractor Subject Inventions under this contract, the Contractor

agrees that the terms of this contract will supersede the terms of such agreement.

(9)The Laboratory agrees to provide Contractor copies of patents issued on Subject Inventions.

(d) Publication

In order that information concerning scientific or technical developments conceived or first actually reduced to practice in the course of or under the contract is not prematurely published so as to adversely affect patent interest of Laboratory or DOE, the Contractor agrees to submit to the Laboratory for patent review a copy of each paper 60 days prior to its intended publication date. The Contractor may publish such information after a 60-day period following such submission or prior thereto if specifically approved by the Laboratory, unless the Contractor is informed in writing within the 60-day period, that in order to protect patentable subject matter, publication must further be delayed. In this event, publication shall be delayed up to 100 days beyond the 60-day period or such longer period as mutually agreed to.

(e)Royalty Sharing

To the extent that the Laboratory licenses any Subject Invention to a third party which results in income therefrom, Contractor and the Laboratory agree to share the net income therefrom fifty (50%) to Contractor and fifty percent (50%) to the Laboratory. Net income is gross income less any expenses and costs associated with the licensing of a Subject Invention including, but not limited to, the cost of preparing, prosecuting and maintaining patents covering said Subject Inventions. The Laboratory agrees to provide to the Contractor annual reports setting forth the licensing activity for Subject Inventions by the Laboratory during the reporting period. The Laboratory agrees that any agreement to license a Subject Invention will be subject to the royalty sharing agreement between the Laboratory and Contractor.

(f) Employee Agreements

The Contractor shall obtain patent agreements to effectuate the provisions of this Patent Rights clause from all persons in its employ who perform any part of the work under this contract except non-technical personnel, such as clerical employees and manual laborers.

III. RIGHTS IN DATA - GENERAL

(a) Definitions

- (1) "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.
- (2) "Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- (3) "Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (4) "Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.
- (5) "Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.
- (6) "Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

(7)"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(8)"Limited rights," as used in this clause, means the rights of the U.S. Government and the Laboratory in limited rights data as set forth in the Limited Rights Notice of paragraph (e)(2) of this clause.

(9)"Restricted rights," as used in this clause, means the rights of the U.S. Government and the Laboratory in restricted computer software, as set forth in the Restricted Rights Notice of paragraph (e)(3) of this clause.

(b) Allocations of rights

(1)Except as provided in paragraph (c) below regarding copyright, the U.S. Government and the Laboratory shall have unlimited rights in-

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (e) below.

(2) The Contractor shall have the right to-

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of the contract,

except to the extent provided in paragraph (d)
below or otherwise expressly set forth in this
contract;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (e) below; and

(iii) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c) below.

(c) Copyright

(1)The U.S. Government has agreed that the Parties may assert copyright in any of their data first produced in the performance of "NIS-IPP project no. _____" for Thrust I projects and "USIC IPP project no. _____" for Thrust II projects; accordingly, each Party has the right to assert its copyright in such data.

(2)Contractor agrees, upon written request of the Laboratory, to assign to the Laboratory the Contractor's entire right, title and interest to copyright in all countries other than the New Independent States in its associated copyrightable work produced in the performance of this contract.

(3)The Parties acknowledge that the U.S. Government has for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the U.S. Government, all copyrightable works produced in the performance of this contract.

(4)For all copyrighted computer software produced in the performance of this contract, the Party owning the copyright shall provide the source code, an expanded abstract, and the object code and the minimum support documentation needed by a competent user to understand and use the software to DOE's Energy Science and Technology Center, P.O. Box 1020, Oak Ridge, TN 37831. The U.S. Government shall have unlimited rights in said expanded abstract.

(5)The Parties agree to place copyright and other notices, as appropriate for the protection of copyright, in human-readable form onto all physical media, and in digitally encoded form in the header of machine readable information recorded on such media such that the notice will appear in human-readable form when the digital data are off-loaded or the data are accessed for display or printout.

(6)The Contractor shall not, without prior written permission of the DOE via the Laboratory, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains a copyright notice, unless the Contractor identifies such data and grants to the U.S. Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (3) above, provided, however, that if such data are computer software the U.S. Government shall acquire a copyright license as set forth in paragraph (e)(3) below if included in this contract or as otherwise may be provided in collateral agreement incorporated in or made part of this contract.

(d) Release, publication, and use of data

(1)The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the U.S. federal export control or national security laws or regulations, or unless otherwise provided below in paragraph (d)(2) or expressly set forth in this contract. This paragraph (d)(1) can be deleted if there will be no work performed in the U.S. by NIS scientists and engineers.

(2)The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by DOE (with notice to the Laboratory).

(e)Protection of limited rights data and restricted computer software

(1)When data are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Laboratory or the U.S. Government under this contract except as provided for in paragraphs (2) and (3) below. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Laboratory or the U.S. Government are to be treated as limited rights data and not restricted computer software.

(2)Limited Rights [This paragraph can be deleted if it is determined that there is no necessity for delivery of Limited Rights Data under the contract.]

The Laboratory or DOE may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following legend to the data and the Laboratory and the U.S. Government will thereafter treat the data in accordance with such Notice:

LIMITED RIGHTS NOTICE

These data are submitted with limited rights under Department of Energy Prime Contract No. _____ and [Name of Laboratory] Contract No. _____. These data may be reproduced and used by the Laboratory or the U.S. Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Laboratory or the U.S. Government; except that the Laboratory or Government may disclose these data outside the Laboratory or the U.S. Government for use and evaluation by other contractors and/or entities participating in the Government's program of which this contract is a part provided that the Laboratory or the U.S. Government makes such

disclosure subject to prohibition against further use and disclosure.

(End of Notice)

- (3)Restricted Rights [This paragraph can be deleted if it is determined that there is no necessity for the delivery of Restricted Computer Software under the contract.]

The contract may identify and specify the delivery of restricted computer software, or the Laboratory or DOE may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the contractor may affix the following legend to the computer software and the Laboratory and the U.S. Government will thereafter treat the computer software in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (1) This computer software is submitted with restricted rights under Department of Energy Prime Contract No. _____ and [Name of Laboratory] Contract No. _____. It may not be used, reproduced, or disclosed by the Laboratory or the U.S. Government except as otherwise expressly stated in the contract.
- (2) This computer software may be -
- (a) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (b) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 - (c) Reproduced for safekeeping (archives) or backup purposes;
 - (d) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating

restricted computer software are made
subject to the same restricted rights;

(e) Disclosed to and reproduced for use by any U.S. Government contractors in accordance with subparagraphs (2)(a) through (d) of this Notice, provided the Laboratory or the U.S. Government makes such disclosure or reproduction subject to these restricted rights; and

(f) Used or copied for use in or transferred to a replacement computer.

(3) If this computer software is published copyrighted computer software, it is licensed to the U.S. Government without disclosure prohibitions, with the minimum rights set forth in paragraph (2) of this Notice.

(4) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(f) Royalty Sharing

To the extent that the Laboratory licenses to a third party any copyrighted work produced in the performance of this contract which results in income therefrom, Contractor and the Laboratory agree to share the net income therefrom fifty percent (50%) to the Contractor and fifty percent (50%) to the Laboratory. Net income is gross income less any expenses and costs associated with the licensing and protection of the copyrighted work including, but not limited to, the costs of obtaining and maintaining the copyright. The Laboratory agrees to provide to the Contractor annual reports setting forth the licensing activity for said copyrighted works by the Laboratory during the reporting period. The Laboratory agrees that any agreement to license a copyrighted work produced in the performance of this contract will be subject to the royalty sharing agreement between the Laboratory and Contractor.

(g) Employee Agreements

The Contractor shall obtain agreements to effectuate the provisions of this Rights in Data clause from all persons in its employ who perform any part of the work under this contract.

IV. ADDITIONAL DATA REQUIREMENTS [This clause can be deleted if all technical data requirements are known in advance of contracting and are set forth in the statement of work.]

- (a) In addition to the data (as defined in Clause III, Rights in Data-General) specified elsewhere in this contract to be delivered, the Laboratory or the DOE may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.
- (b) The Rights in Data-General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data-General clause of this contract, or data which are specifically identified in this contract as not subject to this clause.
- (c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- (d) The DOE via the Laboratory may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

V. BACKGROUND INTELLECTUAL PROPERTY [This clause can be deleted if it is determined that no Contractor Background Intellectual Property is to be used during the performance of the Contract.]

"Background Intellectual Property" is intellectual property (e.g., inventions, software, copyrights, trademarks) belonging to the Contractor that was in existence before this contract. A background invention is an invention or discovery of the Contractor that was conceived outside of this contract and not first actually reduced to practice (i.e., demonstrated) under this contract. Contractor has identified the following Background Intellectual Property that may be used in the performance of this contract:

INTELLECTUAL PROPERTY TERMS FOR NIS SUBCONTRACTS

I. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.

The Contractor shall report to the U.S. Government through the Laboratory, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge and shall furnish to the U.S. Government, at the expense of the U.S. Government, when requested by the U.S. Government or the Laboratory all evidence and information in possession of the Contractor pertaining to such claim or any resulting suit.

II. PATENT RIGHTS

(a) Definitions

- (1) "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.
- (2) "Patent Counsel" means the DOE Patent Counsel assisting the Laboratory.

(b) Invention disclosures and reports

- (1) The Contractor shall furnish the Patent Counsel and the Laboratory:
 - (i) A written report containing full and complete technical information concerning each Subject Invention of the Contractor within 2 months after conception or first actual reduction to practice whichever occurs first in the course of or under this contract, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Contractor. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent

known, the physical, chemical, biological, or electrical characteristics of the invention.

(ii) Upon request, but not more than annually, interim reports on a DOE approved form listing Subject Inventions of the Contractor for that period and certifying that all Contractor Subject Inventions have been disclosed or that there were no such inventions; and

(iii) A final report on a DOE-approved form within 3 months after completion of the contract work listing all Contractor Subject Inventions and certifying that all Contractor Subject Inventions have been disclosed or that there were no such inventions.

(2) The Contractor agrees that the U.S. Government and the Laboratory may duplicate and disclose Contractor Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to the contract.

(c) Rights to Subject Inventions

(1) Pursuant to U.S. DOE's Class Waiver W(C) 95-008 of the Government's Patent Rights in Inventions Made by Employees of Institutes and Other Entities of the Newly Independent States of the Former Soviet Union in the Course of or under Agreements Entered into with Management and Operating Contractors of the Department of Energy, the Contractor has the right to elect title to Subject Inventions of the Contractor in the Newly Independent States. The Laboratory has the right to elect title to Subject Inventions of the Contractor in the United States.

(2) The election of title to a Subject Invention by the Laboratory shall be in accordance with the terms of its Prime Contract.

(3) The election of title to a Subject Invention of the Contractor in the Newly Independent States shall be within 2 years of disclosure pursuant to paragraph b(1), but no later than that of the Laboratory for the same Subject Invention in the United States.

(4) Unless otherwise agreed by the Parties with notification to the Department of Energy, the Contractor has the right to elect title to Subject

Inventions in third countries (excluding the United States).

- (5) The Contractor and Laboratory acknowledge that the U.S. DOE may obtain title to each Subject Invention for which a patent application or applications are not elected or filed by the Contractor and/or the Laboratory and for which any issued patents are not maintained by the Contractor and/or the Laboratory. To the extent that the U.S. DOE acquires title to a Subject Invention, Contractor and the Laboratory agree to take such actions and execute all appropriate documents (at no expense to Contractor) to enable the U.S. DOE to file, prosecute and maintain patent applications thereon.
- (6) The Contractor and the Laboratory acknowledge that the U.S. Government retains a non-exclusive, nontransferable, irrevocable, paid-up license to practice or to have practiced by or on behalf of the U. S. Government every Subject Invention throughout the world.
- (7) For each Subject Invention that the Laboratory elects title thereto pursuant to paragraphs (1) through (2) above, the Laboratory agrees to cause a patent application to be filed and prosecuted in the U.S. Patent Office on said Subject Invention. The Laboratory agrees to timely notify Contractor of any intent of the Laboratory not to elect, file, prosecute, or maintain any Subject Invention of the Contractor and any patent application or patent thereon and in such event shall afford the Contractor the opportunity to acquire title thereto from either DOE or the Laboratory and effect patenting or maintenance thereof at Contractor's expense. The Laboratory agrees to take such actions and execute all appropriate documents to effect such transfer.
- (8) The Contractor certifies that it has not and will not enter into an agreement with a third party that conflicts with this contract. To the extent that any subsequent agreement between the Contractor and a third party conflicts with the allocation of rights in Subject Inventions under this contract, the Contractor agrees that the

terms of this contract will supersede the terms of such agreement.

(9)The Laboratory agrees to provide Contractor copies of patents issued on Subject Inventions.

(d) Publication

In order that information concerning scientific or technical developments conceived or first actually reduced to practice in the course of or under the contract is not prematurely published so as to adversely affect patent interest of Laboratory or DOE, the Contractor agrees to submit to the Laboratory for patent review a copy of each paper 60 days prior to its intended publication date. The Contractor may publish such information after a 60-day period following such submission or prior thereto if specifically approved by the Laboratory, unless the Contractor is informed in writing within the 60-day period, that in order to protect patentable subject matter, publication must further be delayed. In this event, publication shall be delayed up to 100 days beyond the 60-day period or such longer period as mutually agreed to.

(e) Employee Agreements

The Contractor shall obtain patent agreements to effectuate the provisions of this Patent Rights clause from all persons in its employ who perform any part of the work under this contract except non-technical personnel, such as clerical employees and manual laborers.

III. RIGHTS IN DATA - GENERAL

(a)Definitions

(1)"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

(2)"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

- (3)"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (4)"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.
- (5)"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.
- (6)"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
- (7)"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- (8)"Limited rights," as used in this clause, means the rights of the U.S. Government and the Laboratory in limited rights data as set forth in the Limited Rights Notice of paragraph (e)(2) of this clause.
- (9)"Restricted rights," as used in this clause, means the rights of the U.S. Government and the Laboratory in restricted computer software, as set forth in the

Restricted Rights Notice of paragraph (e)(3) of this clause.

(b) Allocations of rights

(1) Except as provided in paragraph (c) below regarding copyright, the U.S. Government and the Laboratory shall have unlimited rights in-

- (i) Data first produced in the performance of this contract;
- (ii) Form, fit, and function data delivered under this contract;
- (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under this contract; and
- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (e) below.

(2) The Contractor shall have the right to-

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of the contract, except to the extent provided in paragraph (d) below or otherwise expressly set forth in this contract;
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (e) below; and
- (iii) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c) below.

(c) Copyright

- (1)The U.S. Government has agreed that the Contractor may assert copyright in any Data first produced in the performance of this contract; accordingly, Contractor has the right to assert copyright in such data.
- (2)Contractor agrees, upon written request of the Laboratory, to assign to the Laboratory the Contractor's entire right, title and interest to copyright in the United States in its associated copyrightable work produced in the performance of this contract.
- (3)Contractor acknowledges that the U.S. Government has for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the U.S. Government, all copyrightable works produced in the performance of this contract.
- (4)For all copyrighted computer software produced in the performance of this contract, the Party owning the copyright shall provide the source code, an expanded abstract, and the object code and the minimum support documentation needed by a competent user to understand and use the software to DOE's Energy Science and Technology Center, P.O. Box 1020, Oak Ridge, TN 37831. The U.S. Government shall have unlimited rights in said expanded abstract.
- (5)Contractor agrees to place copyright and other notices, as appropriate for the protection of copyright, in human-readable form onto all physical media, and in digitally encoded form in the header of machine readable information recorded on such media such that the notice will appear in human-readable form when the digital data are off-loaded or the data are accessed for display or printout.
- (6)The Contractor shall not, without prior written permission of the DOE via the Laboratory, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains a copyright notice, unless the Contractor identifies such data and grants to the U.S. Government, or acquires on its

behalf, a license of the same scope as set forth in paragraph (3) above, provided, however, that if such data are computer software the U.S. Government shall acquire a copyright license as set forth in paragraph (e)(3) below if included in this contract or as otherwise may be provided in collateral agreement incorporated in or made part of this contract.

(d) Release, publication, and use of data

(1)The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the U.S. federal export control or national security laws or regulations, or unless otherwise provided below in paragraph (d)(2) or expressly set forth in this contract. [This paragraph (d)(1) can be deleted if there will be no work performed in the U.S. by NIS scientists and engineers.]

(2)The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by DOE (with notice to the Laboratory).

(e)Protection of limited rights data and restricted computer software

(1)When data are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Laboratory or the U.S. Government under this contract except as provided for in paragraphs (2) and (3) below. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish

form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Laboratory or the U.S. Government are to be treated as limited rights data and not restricted computer software.

(2)Limited Rights [This paragraph can be deleted if it is determined that there is no necessity for delivery of Limited Rights Data under the contract.]

The Laboratory or DOE may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following legend to the data and the Laboratory and the U.S. Government will thereafter treat the data in accordance with such Notice:

LIMITED RIGHTS NOTICE

These data are submitted with limited rights under Department of Energy Prime Contract No. _____ and [Name of Laboratory] Contract No. _____. These data may be reproduced and used by the Laboratory or the U.S. Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Laboratory or the U.S. Government; except that the Laboratory or Government may disclose these data outside the Laboratory or the U.S. Government for use and evaluation by other contractors and/or entities participating in the Government's program of which this contract is a part provided that the Laboratory or the U.S. Government makes such disclosure subject to prohibition against further use and disclosure.

(End of Notice)

(3)Restricted Rights [This paragraph can be deleted if it is determined that there is no necessity for the delivery of Restricted Computer Software under the contract.]

The contract may identify and specify the delivery of restricted computer software, or the Laboratory or

DOE may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the contractor may affix the following legend to the computer software and the Laboratory and the U.S. Government will thereafter treat the computer software in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (1) This computer software is submitted with restricted rights under Department of Energy Prime Contract No. _____ and [Name of Laboratory] Contract No. _____. It may not be used, reproduced, or disclosed by the Laboratory or the U.S. Government except as otherwise expressly stated in the contract.
- (2) This computer software may be -
- (a) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (b) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 - (c) Reproduced for safekeeping (archives) or backup purposes;
 - (d) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
 - (e) Disclosed to and reproduced for use by any U.S. Government contractors in accordance with subparagraphs (2)(a) through (d) of this Notice, provided the Laboratory or the U.S. Government makes such disclosure or reproduction subject to these restricted rights; and
 - (f) Used or copied for use in or transferred to a replacement computer.

(3) If this computer software is published copyrighted computer software, it is licensed to the U.S. Government without disclosure prohibitions, with the minimum rights set forth in paragraph (2) of this Notice.

(4) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(f) Employee Agreements

The Contractor shall obtain agreements to effectuate the provisions of this Rights in Data clause from all persons in its employ who perform any part of the work under this contract.

IV. ADDITIONAL DATA REQUIREMENTS [This clause can be deleted if all technical data requirements are known in advance of contracting and are set forth in the statement of work.]

(a) In addition to the data (as defined in Clause III, Rights in Data-General) specified elsewhere in this contract to be delivered, the Laboratory or the DOE may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data-General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data-General clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d)The DOE via the Laboratory may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

V.BACKGROUND INTELLECTUAL PROPERTY [This clause can be deleted if it is determined that no Contractor Background Intellectual Property is to be used during the performance of the Contact.]

"Background Intellectual Property" is intellectual property (e.g., inventions, software, copyrights, trademarks) belonging to the Contractor that was in existence before this contract. A background invention is an invention or discovery of the Contractor that was conceived outside of this contract and not first actually reduced to practice (i.e., demonstrated) under this contract. Contractor has identified the following Background Intellectual Property that may be used in the performance of this contract: